

# *Sardinia*

## COMMERCE AND NAVIGATION

*Treaty and separate article signed at Genoa November 26, 1838*

*Ratified by Sardinia December 1, 1838*

*Senate advice and consent to ratification March 2, 1839*

*Ratified by the President of the United States March 8, 1839*

*Ratifications exchanged at Washington March 18, 1839*

*Entered into force March 18, 1839*

*Proclaimed by the President of the United States March 18, 1839*

*Superseded by agreement of February 26, 1871,<sup>1</sup> between the United States and Italy*

8 Stat. 512; Treaty Series 316 <sup>2</sup>

### TREATY

The United States of America and His Majesty the King of Sardinia, desirous of consolidating the relations of good understanding which have hitherto so happily subsisted between their respective States and of facilitating and extending the commercial intercourse between the two countries, have agreed to enter into negotiations for the conclusion of a treaty of commerce and navigation, for which purpose the President of the United States has conferred full powers on Nathaniel Niles, their Special Agent near His Sardinian Majesty, and His Majesty the King of Sardinia has conferred like powers on the Count Clement Solar de la Marguerite, Grand Cross of the Military and Religious Order of S. Maurice and S. Lazarus, of Isabella the Catholic of Spain, and Knight of the Order of Christ, his First Secretary of State for the Foreign Affairs;

And the said Plenipotentiaries having exchanged their full powers, found in good and due form, have concluded and signed the following articles:

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<sup>1</sup> TS 177, *ante*, vol. 9, p. 82, ITALY.

<sup>2</sup> For a detailed study of this treaty, see 4 Miller 161.

## ARTICLE I

There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation. The inhabitants of their respective States, shall mutually have liberty to enter the ports and commercial places of the territories of each party, wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories in order to attend to their affairs, and they shall enjoy to that effect the same security and protection as the natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing.

## ARTICLE II

Sardinian vessels arriving either laden or in ballast in the ports of the United States of America, and reciprocally vessels of the United States arriving either laden or in ballast in the ports of the dominions of His Sardinian Majesty, shall be treated on their entrance, during their stay, and at their departure, upon the same footing as national vessels coming from the same place, with respect to the duties of tonnage, light-houses, pilotage, and port charges, as well as to the fees and perquisites of public officers and other duties or charges of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever.

## ARTICLE III

All kind of merchandise and articles of commerce either the produce of the soil or the industry of the United States of America or of any other country, which may be lawfully imported into the ports of the dominions of Sardinia in Sardinian vessels, may also be so imported in vessels of the United States of America without paying other or higher duties or charges of whatever kind or denomination levied in the name or to the profit of the Government, the local authorities or of any private establishment whatsoever, than if the same merchandise or produce had been imported in Sardinian vessels. And reciprocally all kind of merchandise and articles of commerce, either the produce of the soil, or of the industry of the dominions of Sardinia or of any other country, which may be lawfully imported into the ports of the United States, in vessels of the said States, may also be so imported in Sardinian vessels, without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever, than if the same merchandise or produce had been imported in vessels of United States of America.

## ARTICLE IV

To prevent the possibility of any misunderstanding, it is hereby declared that the stipulations contained in the two preceding articles are to their full

extent applicable to Sardinian vessels and their cargoes arriving in the ports of the United States of America, and reciprocally to vessels of the said States and their cargoes arriving in the ports of the dominions of Sardinia, whether the said vessels clear directly from the ports of the country to which they respectively belong, or from the ports of any other foreign country.

#### ARTICLE V

All kind of merchandise and articles of commerce, which may lawfully be exported from the ports of the United States of America in national vessels, may also be exported therefrom in Sardinian vessels without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever, than if the same merchandise or articles of commerce had been exported in vessels of the United States of America. And reciprocally all kind of merchandise and articles of commerce which may be lawfully exported from the ports of the Kingdom of Sardinia in national vessels may also be exported therefrom in vessels of the United States of America without paying other or higher duties or charges, of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever, than if the same merchandise or articles of commerce had been exported in Sardinian vessels.

#### ARTICLE VI

No higher or other duties shall be imposed on the importation into the United States of any article the produce or manufacture of Sardinia, and no higher or other duties shall be imposed on the importation into the Kingdom of Sardinia of any article the produce or manufacture of the United States, than are or shall be payable on the same article being the produce or manufacture of any other foreign country. Nor shall any prohibition be imposed on the importation or exportation of any article the produce of or the manufacture of the United States or of Sardinia, to or from the ports of the United States, or to or from the ports of the Kingdom of Sardinia, which shall not equally extend to all other nations.

#### ARTICLE VII

It is expressly understood and agreed that the preceding articles do not apply to the coastwise navigation of either of the two countries, which each of the two high contracting parties reserves exclusively to itself.

#### ARTICLE VIII

No priority or preference shall be given directly or indirectly by either of the high contracting parties, nor by any company, corporation, or agent acting in their behalf, or under their authority, in the purchase of any article of

commerce lawfully imported on account of, or in reference to, the character of the vessel, whether it be of the one party or the other, in which such article was imported, it being the true intent and meaning of the contracting parties that no distinction or difference whatever shall be made in this respect.

#### ARTICLE IX

If either party shall hereafter grant to any other nation any particular favor in commerce or navigation, it shall immediately become common to the other party, freely where it is freely granted to such other nation, or on yielding the same or an equivalent compensation, when the grant is conditional.

#### ARTICLE X

Vessels of either of the high contracting parties arriving on the coasts of the other, but without the intention to enter a port, or having entered not wishing to discharge the whole or any part of their cargoes, shall enjoy in this respect the same privileges and be treated in the same manner as the vessels of the most favored nations.

#### ARTICLE XI

When any vessel belonging to either of the contracting parties or to their citizens or subjects, shall be wrecked, foundered, or otherwise suffer damage on the coasts or within the dominions of the other, there shall be given to such vessel and all persons on board every aid and protection, in like manner as is usual and customary to vessels of the nation where such shipwreck or damage happens; and such shipwrecked vessel, its merchandise, and other effects, or their proceeds, if the same shall have been sold, shall be restored to their owners, or to those entitled to receive them, upon the payment of such costs of salvage as would have been paid by national vessels in the same circumstances.

#### ARTICLE XII

Sardinian merchant-vessels being forced from stress of weather or other unavoidable causes to enter a port of the United States of America, and reciprocally merchant-vessels of the said States entering the ports of His Sardinian Majesty from similar causes, shall be exempt from port charges and all other duties levied to the profit of the Government, in case the causes which have rendered such entry necessary are real and evident, provided such vessel does not engage in any commercial operation while in port, such as loading and unloading merchandise, it being understood, nevertheless, that the unloading and reloading rendered necessary for the repair of the said vessel shall not be considered an act of commerce affording ground for the payment of duties, and provided also that the said vessel shall not prolong her stay in port beyond the time necessary for the repair of her damages.

## ARTICLE XIII

Considering the remoteness of the respective countries of the two high contracting parties, and the uncertainty resulting therefrom with respect to the various events which may take place, it is agreed that a merchant-vessel, belonging to either of them, which may be bound to a port supposed at the time of its departure to be blockaded, shall not however be captured or condemned for having attempted a first time to enter said port, unless it can be proved that said vessel could and ought to have learned during its voyage that the blockade of the place in question still continued. But all vessels which, after having been warned off once, shall, during the same voyage, attempt a second time to enter the same blockaded port during the continuance of the said blockade, shall then subject themselves to be detained and condemned.

## ARTICLE XIV

All articles of commerce the growth or manufacture of the United States of America, and the products of their fisheries, with the exception of salt, gunpowder, and tobacco manufactured for use, shall be permitted to pass in transitu from the free port of Genoa through the territories of His Sardinian Majesty to any point of the inland frontier of the said territories; and, vice versa, all articles of commerce coming from any one point of the Sardinian inland frontier, destined for the United States, shall be permitted to pass the territories of His Sardinian Majesty to the free port of Genoa without being liable to the payment of any duty whatever levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever, other than such as are required to meet the expenses of the necessary precautionary measures against smuggling, which precautionary measures to be observed in regard to transit to the frontier shall be the same whether the said articles of commerce are imported by the vessels of the one or of the other of the high contracting parties. But if peculiar circumstances or considerations should render the re-establishment of transit duties necessary on the said articles of commerce directed to any one point of the Sardinian frontier, the Sardinian Government, in reserving to itself the full right to establish such duty, engages to notify to the Government of the United States such determination six months before any such transit duty shall be exacted. It is also understood that all articles of commerce imported directly from the United States of America shall be taken and considered as the products of the said States, and shall be entitled equally and in like manner, with the exceptions above mentioned in the present article, to a free transit through the territories of His Sardinian Majesty.

## ARTICLE XV

The two high contracting parties reciprocally grant to each other the liberty of having each in the ports and other commercial places of the other,

Consuls, Vice-Consuls, and Commercial Agents of their own appointment, who shall enjoy the same privileges, powers, and exemptions as those of the most favored nations. But if any of such Consuls shall exercise commerce, they shall be subjected to the same laws and usages to which the private individuals of their nation, or subjects or citizens of the most favored nations are subject in the same places, in respect to their commercial transactions.

#### ARTICLE XVI

It is especially understood that whenever either of the two contracting parties shall select for a consular agent to reside in any port or commercial place of the other party a subject or citizen of this last, such Consul or Agent shall continue to be regarded, notwithstanding his quality of a foreign Consul, as a subject or citizen of the nation to which he belongs, and consequently shall be submitted to the laws and regulations to which natives are subjected in the place of his residence. This obligation, however, shall in no respect embarrass the exercise of his consular functions, or affect the inviolability of the consular archives.

#### ARTICLE XVII

The said Consuls, Vice-Consuls, and Commercial Agents are authorized to require the assistance of the local authorities for the search, arrest, detention, and imprisonment of the deserters from the ships of war and merchant-vessels of their country. For this purpose, they shall apply to the competent tribunals, judges, and officers, and shall in writing demand said deserters, proving by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews; and this reclamation thus substantiated, the surrender shall not be refused. Such deserters when arrested shall be placed at the disposal of the said Consuls, Vice-Consuls, or Commercial Agents, and may be confined in the public prisons at the request and cost of those who shall claim them in order to be detained until the time when they shall be restored to the vessels to which they belonged, or sent back to their own country by a vessel of the same nation or any other vessel whatsoever. But if not sent back within three months from the day of their arrest, they shall be set at liberty and shall not again be arrested for the same cause. If, however, the deserter should be found to have committed any crime or offence, his surrender may be delayed until the tribunal before which his case should be depending shall have pronounced its sentence and such sentence shall have been carried into execution.

#### ARTICLE XVIII

The citizens and subjects of each of the contracting parties shall have power to dispose of their personal goods within the jurisdiction of the other,

by testament, donation, or otherwise, and their representatives, being citizens or subjects of the other party, shall succeed to their said personal goods, whether by testament or ab intestato, and may take possession thereof either by themselves or by others acting for them and dispose of the same at will, paying such taxes and dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And, in case of the absence of the representatives, such care shall be taken of the said goods as would be taken of the goods of a native of the same country in like case, until the lawfull owner may take measures for receiving them. And if a question should arise among several claimants as to which of them said goods belong, the same shall finally be decided by the laws and judges of the land wherein the said goods are. And where, on the death of any person holding real estate within the territories of one of the contracting parties, such real estate would by the laws of the land descend on a citizen or subject of the other party who by reason of alienage may be incapable of holding it, he shall be allowed a reasonable time to sell such real estate, and to withdraw and export the proceeds without molestation and without paying to the profit of the respective Governments any other dues, taxes, or charges than those to which the inhabitants of the country wherein said real estate is situated shall be subject to pay in like cases.

#### ARTICLE XIX

The present treaty shall continue in force for ten years, counting from the day of the exchange of the ratifications; and if, twelve months before the expiration of that period, neither of the high contracting parties shall have announced to the other by an official notification its intention to arrest the operation of the said treaty, it shall remain obligatory one year beyond that time, and so on until the expiration of the twelve months which will follow a similar notification, whatever is the time at which it may take place.

#### ARTICLE XX

The present treaty shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Majesty the King of Sardinia; and the ratifications shall be exchanged in the city of Washington within ten months from the date of the signature thereof, or sooner if possible.

In faith whereof the Plenipotentiaries of the contracting parties have signed the present treaty, and thereto affixed their respective seals.

Done at Genoa this 26th November, 1838.

NATHANIEL NILES	[SEAL]
SOLAR DE LA MARGUERITE	[SEAL]

## SEPARATE ARTICLE

Circumstances of a peculiar nature rendering it necessary for His Sardinian Majesty to continue for a time differential duties, to the disadvantage of foreign flags, on grain, olive-oil, and wine, imported directly from the Black Sea, the ports of the Adriatic, and of those of the Mediterranean, as far as Cape Trafalgar, notwithstanding the general provisions of the articles No. 2, 3, and 4 of the present treaty, it is distinctly understood and agreed by the high contracting parties, that the United States shall have full and entire liberty to establish countervailing differential duties on the same articles imported from the same places to the disadvantage of the Sardinian flag, in case the existing or any other differential duties on the said articles shall be continued in force, to the disadvantage of the flag of the United States of America, by His Sardinian Majesty, beyond a period of four years, counting from the day of the exchange of the ratifications of the present treaty and separate article, but all countervailing differential duties on the said articles shall cease to be exacted from the time the United States Government shall have been informed officially of the discontinuance or differential duties on the part of His Sardinian Majesty.

The present separate article shall have the same force and value as if it were inserted word for word in the treaty signed this day, and shall be ratified in the same time.

In faith whereof we, the undersigned, by virtue of our full powers, have signed the present separate article, and thereto affixed our respective seals.

Done at Genoa the 26th November, 1838.

NATHANIEL NILES	[SEAL]
SOLAR DE LA MARGUERITE	[SEAL]